IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.1114 OF 2004
IN
NOTICE OF MOTION NO.4009 OF 2002
IN
L.C. SUIT NO.5703 OF 2002

Shri Vitthalrao Hiraji Jadhav ... Appellant

V/s.

Municipal Corporation of
Greater Mumbai & Ors. ... Respondents

Mr.J.S. Kini for Appellant
Mr.J. Xavier for Respondent Nos.1 and 2
Mr.S.N. Gawade for Respondent No.3

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 22, 2004**

P.C.:

. The impugned order dismisses the Motion filed by the Plaintiff for certain interim reliefs. Ad-interim relief had been granted on 18.10.2002. It appears that on 4.11.2004 when the matter appeared on Board, it was shown for filing of the written statement by the Respondent-Corporation. The Notice of Motion itself was not on Board for hearing. The replies of the Corporation had also not been filed to the Notice of Motion. On this day, the learned trial Judge has dismissed the Notice of Motion and vacated the interim relief since the advocate for the appellant sought an

adjournment.

2. In my view, this order must be set aside since the matter was shown on Board only for filing written statement. Furthermore, no replies to the Motion have been filed. In these circumstances, it was not proper for the trial Court to dismiss the Motion without any reasons being recorded.

3. The order is, therefore, set aside. The Corporation will file reply to the Motion within four weeks from today. The trial Court to decide the Motion as expeditiously as possible.

4. Mr.Kini, on instructions from the appellant, states that although the impugned order was passed on 4.11.2004, the suit structure has not been demolished as yet. In view of this, the ad-interim relief granted by the order of 18.10.2002 will continue till the Motion is heard. Motion expedited.

5. Appeal from Order is disposed of accordingly.

6. The appellant to inform the concerned Ward Officer of this order.

7. In view of the Appeal from Order being disposed

of, nothing survives in Civil Application No.1584 of 2004 and the same is disposed of accordingly.